

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 28, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VALERIE L.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,

Defendant.

No. 1:24-cv-03076-EFS

**ORDER AFFIRMING THE ALJ'S
DENIAL OF BENEFITS**

Due to migraine headaches, tension headaches, and degenerative disc disease of the spine, Plaintiff Valerie L. claims she is unable to work full-time and applied for social-security benefits. She appeals the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that the ALJ improperly analyzed the credibility of Plaintiff's subjective complaints and the third-party witness statements, and the ALJ's evaluation of the medical expert opinions was flawed.

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 Although the record reflects that Plaintiff's impairments limit her physically, the
2 Administrative Law Judge's (ALJ) finding of non-disability is adequately explained
3 and supported by substantial evidence. For the reasons that follow, the ALJ's
4 decision is affirmed.

5 **I. Background**

6 In June 2019, Plaintiff filed an application for benefits under Title 2,
7 claiming disability beginning December 1, 2017, based on the physical
8 impairments noted above.² After the agency denied her application initially and on
9 reconsideration, Plaintiff requested a hearing before an ALJ.³ ALJ Gregory
10 Moldafsky held a telephonic hearing in January 2021, during which Plaintiff and a
11 vocational expert testified.⁴ ALJ Moldafsky issued a decision denying the claim,
12 and the Appeals Council denied Plaintiff's request for review.⁵ Plaintiff timely filed
13 suit in this Court, and in March 2023 the Court remanded the case back to the
14 Commissioner for further proceedings.⁶

18 ² AR 240-241, 253.

19 ³ AR 167-182.

20 ⁴ AR 117-147.

21 ⁵ AR 12-28, 1-6.

22 ⁶ AR 863-867, 870-888.

1 On December 20, 2023, ALJ Evangeline Mariano-Jackson (the ALJ) held a
2 hearing via telephone, at which Plaintiff and a vocational expert testified.⁷ After
3 the hearing, the ALJ issued a decision denying benefits.⁸ The ALJ found Plaintiff's
4 alleged symptoms were not entirely consistent with the medical evidence and the
5 other evidence.⁹ As to medical opinions, the ALJ found:

- 6 • The opinions of state agency evaluators Merry Alto, MD, and Norman
7 Staley, MD, that there was insufficient evidence to evaluate the claim
8 prior to the date last insured to be not persuasive.
- 9 • The opinions of treating neurologist, Tony Lee, MD, to be not
10 persuasive.

11 As to the sequential disability analysis, the ALJ found:

- 12 • Plaintiff met the insured status requirements of the Social Security
13 Act through December 31, 2017.
- 14 • Step one: Plaintiff had not engaged in substantial gainful activity
15 between her alleged onset date of December 1, 2017, and her date last
16 insured of December 31, 2017.

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19 ⁷ AR 817-839.

20 ⁸ AR 795-816. Per 20 C.F.R. § 404.1520(a)–(g), a five-step evaluation determines
21 whether a claimant is disabled.

22 ⁹ AR 802-805.
23

- 1 • Step two: Plaintiff had the following medically determinable severe
2 impairments: tension headaches, migraines, and degenerative
3 changes of the spine.
- 4 • Step three: Plaintiff did not have an impairment or combination of
5 impairments that met or medically equaled the severity of one of the
6 listed impairments and specifically considered Listing 1.15, 1.16, and
7 11.02.
- 8 • RFC: Plaintiff had the RFC to perform work at the light exertional
9 level with the following exceptions:
10 [Plaintiff can] stand and/or walk 6 hours in an 8-hour workday
11 and sit for 6 hours in an 8-hour workday. [Plaintiff] can
12 occasionally stoop, kneel, crouch, crawl, and climb ramps and/or
13 stairs. [Plaintiff] can never climb ladders, ropes, or scaffolds.
14 [Plaintiff] can never work in extreme heat or cold. [Plaintiff] can
15 tolerate occasional exposure to fumes, gases, and odors.
16 [Plaintiff] can tolerate moderate noise. [Plaintiff] can never be
17 exposed to vibration or direct sunlight. [Plaintiff] can never work
18 at unprotected heights or around moving mechanical parts.
- 19 • Step four: Plaintiff was unable to perform her past relevant work as a
20 general duty nurse.
- 21 • Step five: Plaintiff was able to perform jobs available in the national
22 economy in substantial numbers as an electrical accessories assembler
23 (DOT 729.687-010), a marker (DOT 209.587-034), and a housekeeping
24 cleaner (DOT 323.687-014).¹⁰

¹⁰ AR 800-809.

1 Plaintiff timely requested review of the ALJ's decision by the Appeals
2 Council and now this Court.¹¹

3 II. Standard of Review

4 The ALJ's decision is reversed "only if it is not supported by substantial
5 evidence or is based on legal error,"¹² and such error impacted the nondisability
6 determination.¹³ Substantial evidence is "more than a mere scintilla but less than a
7 preponderance; it is such relevant evidence as a reasonable mind might accept as
8 adequate to support a conclusion."¹⁴

9
10 ¹¹ AR 264.

11 ¹² *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

12 ¹³ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), *superseded on other*
13 *grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an
14 ALJ decision due to a harmless error—one that "is inconsequential to the ultimate
15 nondisability determination").

16 ¹⁴ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
17 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
18 court "must consider the entire record as a whole, weighing both the evidence that
19 supports and the evidence that detracts from the Commissioner's conclusion," not
20 simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,
21 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does
22 not indicate that such evidence was not considered[.]").
23

III. Analysis

Plaintiff seeks relief from the denial of disability on three grounds. She argues the ALJ erred when evaluating Plaintiff's subjective complaints, erred in evaluating the third-party witness statements, and erred when evaluating the medical opinion of Dr. Lee. The Commissioner argues there was no error because the ALJ reasonably assessed Dr. Lee's opinions, adequately explained that the witness statements were not consistent with the record, and reasonably discounted Plaintiff's allegations of disabling impairments during the relevant period. As is explained below, the Court agrees with the Commissioner and affirms the ALJ's nondisability finding.

A. Symptom Reports: Plaintiff fails to establish consequential error

Plaintiff argues the ALJ failed to properly assess her subjective complaints regarding her migraine and tension headaches and her back pain for the period prior to December 31, 2017, her date last insured.

1. Standard

When examining a claimant's symptoms, the ALJ utilizes a two-step inquiry. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged."¹⁵ Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony

¹⁵ *Molina*, 674 F.3d at 1112.

1 about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing
 2 reasons’ for the rejection.”¹⁶ General findings are insufficient; rather, the ALJ must
 3 identify what symptom claims are being discounted and what evidence undermines
 4 these claims.¹⁷ “The clear and convincing standard is the most demanding required
 5 in Social Security cases.”¹⁸ Therefore, if an ALJ does not articulate specific, clear,
 6 and convincing reasons to reject a claimant’s symptoms, the corresponding
 7 limitations must be included in the RFC.¹⁹

8 2. Relevant Testimony

9 a. Plaintiff’s Testimony

10 On January 27, 2021, Plaintiff appeared with her attorney via telephone for a
 11

12 ¹⁶ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
 13 F.3d at 1036).

14 ¹⁷ *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), and *Thomas v.*
 15 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
 16 explain why he discounted claimant’s symptom claims)).

17 ¹⁸ *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
 18 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

19 ¹⁹ *Lingenfelter*, 504 F.3d at 1035 (“[T]he ALJ failed to provide clear and convincing
 20 reasons for finding Lingenfelter’s alleged pain and symptoms not credible, and
 21 therefore was required to include these limitations in his assessment of
 22 Lingenfelter’s RFC.”).

1 hearing before ALJ Gregory Moldafsky.²⁰ She said that she lived in a one-story
2 home with her mother and had no pets.²¹ She said she has a driver's license.²²
3 When asked by the ALJ to consider the time period prior to December 31, 2017,
4 Plaintiff said she was able to drive then and drove around Las Vegas before she
5 moved back to Yakima to take care of her father in 2016.²³ When asked to focus on
6 the period after returning to Yakima, Plaintiff said she drove her father to
7 appointments or went to the grocery store.²⁴ She had migraines about 3 times a
8 week and when she did her brother had to help her father.²⁵ When she had a
9 migraine, she had to take medication and go to bed.²⁶ She has been on medication
10 for years but the medication does not stop the migraines once they start.²⁷ Plaintiff
11 said that her migraines were triggered by weather changes, too little sleep, not
12 enough food or water, bright lights, strong scents, cigarette smoke, certain foods,
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15 ²⁰ AR 117-147.

16 ²¹ AR 122-123.

17 ²² AR 123.

18 ²³ AR 124.

19 ²⁴ AR 124-125.

20 ²⁵ AR 125.

21 ²⁶ *Id.*

22 ²⁷ AR 126.

1 stress, and glare.²⁸ She said that it seemed to worsen over time and that she tried
2 to avoid foods with preservatives and did not eat in restaurants.²⁹ She said she just
3 started taking Emgality.³⁰

4 Plaintiff said that her father was diagnosed with lung cancer in July 2016
5 and died seven months later.³¹ She said that his treatment center was 5 minutes
6 from home and that a second opinion confirmed it was the best option for him.³²
7 Plaintiff testified that a couple times a week she drove her father to his chemo
8 treatments and sat with him and that when she was not able to go her brother took
9 him.³³ She said that when she moved in with her parents her back was already an
10 issue and that she went to a chiropractor because he had a payment plan for \$50 a
11 week and she hoped it would help so she went every week.³⁴ She was having pain
12 in her low back on her right side and occasionally it would go down her back.³⁵
13 Plaintiff said that pain radiated down her left and right side and she could not sit
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15 ²⁸ *Id.*

16 ²⁹ AR 126-127.

17 ³⁰ AR 127.

18 ³¹ *Id.*

19 ³² AR 128.

20 ³³ *Id.*

21 ³⁴ AR 129.

22 ³⁵ AR 129-130.

1 or stand and a doctor told her that it was from her low back.³⁶ After the doctor told
2 her the origin of her pain she was told to use a pillow when she sat.³⁷ Plaintiff said
3 she tried to do household chores such as a cleaning and washing dishes but would
4 have to stop to rest after 20 minutes.³⁸ Plaintiff said that in 2017 she could sit for
5 30-45 minutes and at the time of hearing could sit for 30 minutes.³⁹ She said she
6 can stand for no more than 5 minutes and that she has to lie down during the day
7 because she gets too tired.⁴⁰ Plaintiff said she would get tired because of low energy
8 and fatigue and that this has been the case since she started caring for her father
9 in 2016.⁴¹

10 Plaintiff testified that since her father passed away and she had been caring
11 for her mother her conditions have gradually worsened and that when she goes out
12 to do errands it takes her a couple days to recover.⁴² She did not know how long it
13 would have taken her to recover back in 2016.⁴³ She said that in 2016 her brother
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15 ³⁶ AR 130.

16 ³⁷ *Id.*

17 ³⁸ *Id.*

18 ³⁹ AR 131.

19 ⁴⁰ *Id.*

20 ⁴¹ AR 132.

21 ⁴² *Id.*

22 ⁴³ *Id.*

1 helped about three days a week, both when she had migraines and at other times.⁴⁴
2 Plaintiff said she was taking medication for her back and had completed physical
3 therapy in the past but that after an MRI was performed she was told physical
4 therapy would not help her.⁴⁵ Plaintiff said that she was taking Tramadol,
5 tizanidine, and Tylenol.⁴⁶ She said she could carry 15-20 pounds.⁴⁷ She said she
6 could not be on her feet throughout the day but could carry 15-20 pounds one time
7 and put it down, but could not carry such weight all day.⁴⁸

8 Plaintiff testified that she had been referred to a neurosurgeon but she only
9 wanted to undergo surgery as a last resort.⁴⁹ She said that she was undergoing an
10 injection but did not get relief from a prior injection.⁵⁰ Plaintiff testified that when
11 she had a migraine her neighbors were able to come over and take care of her
12 mother and that she did not know what she would do without them.⁵¹ Plaintiff said
13 that there are days that she will be stiff and have no energy and needs to use her
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15 ⁴⁴ AR 133.

16 ⁴⁵ *Id.*

17 ⁴⁶ AR 134.

18 ⁴⁷ *Id.*

19 ⁴⁸ AR 135.

20 ⁴⁹ AR 136.

21 ⁵⁰ *Id.*

22 ⁵¹ *Id.*

1 mother's bath chair, and when asked explained that was currently and not in
2 2017.⁵²

3 On December 20, 2023, Plaintiff appeared with her attorney via telephone
4 for a hearing before ALJ Evangeline Mariano-Jackson.⁵³ Plaintiff testified that she
5 completed college and had a bachelor's degree and that she is 5'2" and weighs 123
6 pounds.⁵⁴ Plaintiff was questioned whether her migraines worsened between 2014
7 when they were 2/10 to 2017 when they were 7/10 and answered that her
8 headaches waxed and waned.⁵⁵ Plaintiff said that in March 2017 when Dr. Lee said
9 her migraines were 7/10 she was dealing with her father's illness.⁵⁶ She said at
10 that time she was getting migraines at least 3 times week.⁵⁷ She said that her
11 migraines were bad enough that when she got them she would need to stay in bed
12 and her brother would have to take their father to his chemo appointments.⁵⁸
13 Plaintiff said the medication made her fuzzy and she would need to go to bed, and
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16 ⁵² AR 137.

17 ⁵³ AR 818-839.

18 ⁵⁴ AR 821-822.

19 ⁵⁵ AR 825-826

20 ⁵⁶ AR 826.

21 ⁵⁷ *Id.*

22 ⁵⁸ AR 826-827.

1 that no two migraines are the same.⁵⁹ She said that she has probably gotten about
2 3 headaches a week from 2017 to present.⁶⁰ Plaintiff testified that she changed her
3 diet and tried to reduce stress to reduce the frequency of her migraines but she
4 cannot control other triggers such as weather changes, smells, and bright lights.⁶¹
5 Plaintiff stated that she was feeling pressure behind her eye and might be getting
6 a migraine.⁶² She said that she took medication daily but still had migraines.⁶³
7 Plaintiff testified that in 2017 she was taking Topamax, Depakote, Fioricet,
8 Tramadol, Promethazine, and Vicodin, but that they discontinued Fioricet,
9 Promethazine, and Vicodin.⁶⁴ Plaintiff said that once she had a migraine and had
10 to take medication she would need to go to bed for 4–5 hours.⁶⁵ Plaintiff said that
11 she would be in bed 3 times a week and that when she was not able to take care of
12 her mother their neighbors would help them.⁶⁶ She said that in 2017 her brother
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15 ⁵⁹ AR 827.

16 ⁶⁰ *Id.*

17 ⁶¹ AR 828.

18 ⁶² AR 829.

19 ⁶³ *Id.*

20 ⁶⁴ AR 830.

21 ⁶⁵ AR 830-831.

22 ⁶⁶ AR 831.

1 was still living in their parent's home and he helped her.⁶⁷ Her neighbors helped
2 until her mother was placed in a nursing home in April 2023.⁶⁸ Plaintiff's mother
3 died in November 2023.⁶⁹

4 Plaintiff said that she did not think that her medications helped her to
5 control her migraine headaches.⁷⁰ Plaintiff said that in 2002 she worked for
6 University of Nevada School of Medicine as an office nurse and that she worked as
7 an office nurse for 15 years.⁷¹

8 *b. Relevant Witness Testimony*

- 9 1. Maira A. – wrote that she is the caregiver for Plaintiff's mother for the
10 last two years and had witnessed Plaintiff struggle due to migraines and
11 back pain.⁷² In a second written statement, Ms. A. stated that she had
12 seen first-hand how pain stopped Plaintiff from having the ability to
13 function or leave home.⁷³

16 ⁶⁷ *Id.*

17 ⁶⁸ *Id.*

18 ⁶⁹ AR 832.

19 ⁷⁰ *Id.*

20 ⁷¹ *Id.*

21 ⁷² AR 310.

22 ⁷³ AR 1104.

- 1 2. Mike S. – wrote that he is Plaintiff’s neighbor and is one of the main
2 personal care aides for Plaintiff’s mother.⁷⁴ He wrote that he often gets
3 messed from Plaintiff asking for help and he tries to do the heavy
4 lifting.⁷⁵
- 5 3. Ben L. – wrote that he is Plaintiff’s brother and lives with her and their
6 mother, but he works and the care of their mother frequently falls on
7 Plaintiff.⁷⁶ He wrote that there is presently in-home care for their mother
8 and that their neighbors’ children come in to move their mother.⁷⁷
- 9 4. Nayeli S. – wrote that she is Plaintiff’s neighbor and has seen Plaintiff
10 frequently shut herself in a dark room due to migraines.⁷⁸
- 11 5. [unnamed and unsigned] – Plaintiff’s sister wrote that she helped her
12 sister take care of their parents and did shopping and cooked meals
13 because Plaintiff could not do so due to migraines and back pain, but that
14 she took a job as a caregiver after her father’s death and the care fell on
15 Plaintiff.⁷⁹ She wrote that in 2020 she could no longer help Plaintiff care

17 ⁷⁴ AR 313.

18 ⁷⁵ *Id.*

19 ⁷⁶ AR 314

20 ⁷⁷ *Id.*

21 ⁷⁸ AR 316.

22 ⁷⁹ AR 1118.

1 for their mother and they had the neighbors' children start coming to
2 watch their mother at night and had an in-home care company coming in
3 during the day.⁸⁰

4 3. The Medical Record

5 Because the period at issue is from the alleged onset date of December 1,
6 2017, through the alleged onset date of December 31, 2017, the Court cites to only
7 those records, which are relevant to that time period.

8 a. Dr. Hyson

9 From November 5, 2013 through September 8, 2016, Plaintiff was treated by
10 neurologist Morton Hyson, MD, for migraines and headaches.⁸¹ Initially, Dr Hyson
11 prescribed Topamax in varying doses, Soma, and Fioricet, and ibuprofen as needed
12 but continued to experience three to five headaches a week.⁸² In December 2014,
13 Dr. Hyson added Depakote to her medication, as well as a thermal-relief system.⁸³
14 In June 2015, Dr. Hyson increased Plaintiff's dosage of Depakote ER because her
15 headaches were reported to be less frequent and less severe when taking it.⁸⁴ In
16 May 2016, Plaintiff reported that she was doing better and was continued on her
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18 ⁸⁰ *Id.*

19 ⁸¹ AR 322-335.

20 ⁸² AR 324-325.

21 ⁸³ AR 326.

22 ⁸⁴ AR 328.

1 regimen of Depakote, Topamax, and Fioricet, and Ultram as needed.⁸⁵ In
2 September 2016, Dr. Hyson noted that Plaintiff had switched from taking
3 Depakote ER (extended release) to Depakote DR and had side effects but was
4 switched back to Depakote ER.⁸⁶

5 *b. The Joint – The Chiropractic Place*

6 Between January 30, 2014 and September 14, 2016, Plaintiff sought
7 treatment at The Joint for migraine headaches.⁸⁷ When instructed to rate her pain
8 level “right now” she indicated that her pain level was 2/10.⁸⁸ The pain level rating
9 was carried on throughout the records and noted to be initially reported as a 2/10.⁸⁹
10 Plaintiff’s pain level rating was also noted to be 2/10 during several reevaluations
11 performed in 2014.⁹⁰

12 *c. Washington Neurology*

13 On March 9, 2017, Plaintiff presented to Tony Lee, MD, with complaints of
14 migraine headaches for 11 years but currently rated 7/10 in severity with “eyeball
15 pulling pain” since January 19, 2017, and which were accompanied by photophobia,
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17 ⁸⁵ AR 331.

18 ⁸⁶ AR 331-332.

19 ⁸⁷ AR 336-402.

20 ⁸⁸ AR 340.

21 ⁸⁹ AR 336-402.

22 ⁹⁰ AR 343, 344, 346, 347, 348.

1 phonophobia, nausea, and vomiting.⁹¹ Plaintiff reported that after finding out she
2 had a soy allergy she limited soy and the headaches continued but were no longer
3 accompanied by aura.⁹² Stressors included taking care of her parents and selling
4 her home.⁹³ Plaintiff was currently taking Topamax and Depakote daily and taking
5 Fioricet, Tramadol, promethazine, and Vicodin as needed.⁹⁴ On physical
6 examination, all systems were normal.⁹⁵ Dr. Lee diagnosed episodic tension-type
7 headaches, not intractable; and migraine without aura, not intractable, without
8 status migrainosus.⁹⁶ Dr. Lee continued her medications.⁹⁷

9 On June 9, 2017, Plaintiff presented to Dr. Lee for follow-up.⁹⁸ She reported
10 that her father had passed away and her mother was having a hard time, and that
11 she had multiple invitations to wedding and graduation ceremonies upcoming.⁹⁹
12
13

14 ⁹¹ AR 420.

15 ⁹² *Id.*

16 ⁹³ *Id.*

17 ⁹⁴ *Id.*

18 ⁹⁵ AR 420-421.

19 ⁹⁶ AR 422.

20 ⁹⁷ *Id.*

21 ⁹⁸ AR 424.

22 ⁹⁹ *Id.*

1 Plaintiff's examination was within normal limits and Dr. Lee again continued her
2 current medication regimen.¹⁰⁰

3 On February 12, 2018, Plaintiff presented to Dr. Lee with complaints of bad
4 headaches for the last two weeks and reported that the use of hydrocodone for the
5 pain had caused severe constipation.¹⁰¹ Plaintiff still had many stressors and on
6 examination was found to be suffering from fatigue, nausea, back pain, and
7 headaches.¹⁰² Dr. Lee diagnosed episodic tension-type headaches, not intractable;
8 and migraine without aura, not intractable, without status migrainosus, and
9 advised Plaintiff that she needed to manage triggers and stressors, as she was
10 already on multiple medications.¹⁰³

11 On June 1, 2018, Plaintiff presented to Dr. Lee for follow-up and reported
12 that she was doing well with headaches and would be going to Spokane with family
13 and friends.¹⁰⁴ Dr. Lee diagnosed episodic tension-type headaches, not intractable;
14 and migraine without aura, not intractable, without status migrainosus, and
15 advised Plaintiff to continue on her current medication regimen.¹⁰⁵

17 ¹⁰⁰ AR 425-426.

18 ¹⁰¹ AR 428.

19 ¹⁰² *Id.*

20 ¹⁰³ AR 430.

21 ¹⁰⁴ AR 432.

22 ¹⁰⁵ AR 434.

1 On March 4, 2019, Plaintiff presented to Dr. Lee with complaints that she
2 was “battling with headaches” because her insurance was not covering 200 mg of
3 Topamax and would only cover 150 mg.¹⁰⁶ Dr. Lee reviewed a recent MRI of the
4 lumbar spine taken in 2018 and noted that he indicated mild disc bulge at L3-4,
5 L4-5, and L5-S1; posterolisthesis of the L5-S1; moderate L3-4 stenosis and mild to
6 moderate stenosis at right L3-4 and bilateral L4-5, and L5-S1; and degenerative
7 disc disease most severe at L3-4 and L4-5.¹⁰⁷ On examination Plaintiff was positive
8 for back pain and headache.¹⁰⁸ Dr. Lee diagnosed episodic tension-type headaches,
9 not intractable; and migraine without aura, not intractable, without status
10 migrainosus; spondylolisthesis, lumbar region; and intervertebral disc
11 degeneration, lumbar region.¹⁰⁹ Dr. Lee continued Plaintiff’s medication and
12 prescribed traction and physical therapy with core exercises.¹¹⁰

13 On April 8, 2019, Plaintiff returned for follow-up for back pain and
14 presented with back pain and headache.¹¹¹ Dr. Lee noted that an EMG performed
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17 ¹⁰⁶ AR 436.

18 ¹⁰⁷ *Id.*

19 ¹⁰⁸ AR 436-437.

20 ¹⁰⁹ AR 438.

21 ¹¹⁰ AR 438-439.

22 ¹¹¹ AR 440.

1 that day¹¹² showed a prolonged H wave with history of right tibial nerve injury,
2 which was consistent with L5-S1 etiology.¹¹³ Dr. Lee prescribed a 15 day trial of
3 Diclofenac.¹¹⁴ ¹¹⁵ Dr. Lee diagnosed episodic tension-type headaches, not
4 intractable; and migraine without aura, not intractable, without status
5 migrainosus; spondylolisthesis, lumbar region; intervertebral disc degeneration,
6 lumbar region; and tarsal tunnel syndrome, right lower limb.¹¹⁶

7 *d. Prosser Comprehensive Pain Clinic*

8 On August 8, 2018, Plaintiff presented to John Groner, MD, for a
9 consultation on the referral of her primary care provider.¹¹⁷ She reported back pain
10 that radiated into her left posterior thigh and leg, and is aching, throbbing, numb
11 and burning in nature and was rated a 4-5/10.¹¹⁸ Plaintiff reported that she had
12 injured her back from a fall in a casino 12 years prior and that she had pain that
13 came and went but had worsened after she injured it in June when moving her
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15

16 ¹¹² AR 446-447.

17 ¹¹³ AR 442.

18 ¹¹⁴ *Id.*

19 ¹¹⁵ AR 436-437.

20 ¹¹⁶ AR 444.

21 ¹¹⁷ AR 403.

22 ¹¹⁸ *Id.*

1 mother.¹¹⁹ Plaintiff was positive for headaches and back pain.¹²⁰ On examination,
2 she had discomfort on palpation to the left hip abductors, negative SLR and clonus,
3 5/5 lower extremity strength except 4/5 strength L5 innervated muscle weakness,
4 and reduced light touch sensation at L3, L4, L5 and S1.¹²¹ Dr. Groner assessed
5 lumbar radiculopathy, lumbar facet pain, muscle pain, and knee pain.¹²² He noted
6 that he would order an MRI to determine the reason for Plaintiff's weakness and
7 sensory dysfunction.¹²³

8 *e. Chiropractic Health Center*

9 On August 10, 2016, Plaintiff presented to Jim Patton, DC, for treatment of
10 migraine headaches, neck pain, and spine pain.¹²⁴ She reported that she had x-
11 rays, MRI, CT scan, and lab tests performed and that she was taking the following
12 medications: Topamax, Depakote, Fioricet, and Tramadol.¹²⁵ Plaintiff reported that
13 she had pain in her head, shoulder, mid back, low back, and hip and that it affected
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16 ¹¹⁹ *Id.*

17 ¹²⁰ AR 404.

18 ¹²¹ AR 405.

19 ¹²² AR 406.

20 ¹²³ *Id.*

21 ¹²⁴ AR 515.

22 ¹²⁵ *Id.*

1 her ability to sleep, rest, stand, climb stairs, and do housework.¹²⁶ Plaintiff said her
2 pain was a 2-3 or 10 and was occasional, mild, intermittent pain that was getting
3 better.¹²⁷ Plaintiff reported that she had mild migraines and had not had a
4 migraine for 3 weeks after switching her bed and pillows and going to a church
5 healing mass.¹²⁸ On August 17, 2016, Plaintiff reported that she had lifted two 40
6 pound water packs out of a cart and into a Jeep and reported that her chiropractic
7 treatment had decreased her pain.¹²⁹ On August 25, 2016, Plaintiff reported that
8 she needed to use a new mattress; on October 5, 2016, she reported that her brain
9 was working better; and on October 12, 2016, Plaintiff reported that she was using
10 a seat cushion and her pain had decreased overall with chiropractic care.¹³⁰ On
11 October 19, 2016, Plaintiff reported having 4 migraines with nausea in the last
12 week triggered by stress and weather.¹³¹ On October 27, 2016, Plaintiff reported
13 that sugar seemed to trigger headaches and she reported on November 3, 2016,

17 ¹²⁶ AR 516.

18 ¹²⁷ *Id.*

19 ¹²⁸ AR 518.

20 ¹²⁹ *Id.*

21 ¹³⁰ *Id.*

22 ¹³¹ *Id.*

1 that she was limiting sugar, but on November 11, 2016, she reported that she had
2 2 headaches the week prior in the afternoon.¹³²

3 On November 17, 2016, Plaintiff repeated that she had 2 migraines the prior
4 week and thought she should get a new mattress.¹³³ On November 30, 2016 and
5 December 6, 2016, Plaintiff did not report migraines but at her December 13, 2016
6 visit Dr. Patton noted that he was referring Plaintiff to a neurologist because she
7 was having one headache a week.¹³⁴ Dr. Patton also noted that Plaintiff reported
8 she had shoveled snow from the sidewalk.¹³⁵ On December 27, 2016, Dr. Patton
9 noted that Plaintiff slipped on ice and had bruised her knee and had a headache for
10 3 days.¹³⁶ On visits on January 3, 10, and 17 of 2017, Plaintiff reported feeling
11 dizzy but did not report headaches un January 24, 2017, when she reported a
12 migraine after sleeping on the sofa.¹³⁷

13 On January 31, 2017, Plaintiff reported a headache with nausea when en
14 route home from her appointment.¹³⁸ On February 7, 2017, Plaintiff reported that
15

16 ¹³² *Id.*

17 ¹³³ AR 519.

18 ¹³⁴ *Id.*

19 ¹³⁵ *Id.*

20 ¹³⁶ *Id.*

21 ¹³⁷ *Id.*

22 ¹³⁸ AR 520.

1 she woke at 4:30 am with a migraine but was good over the weekend; and on
2 February 14, 2017, she reported that she had no headaches until Sunday night.¹³⁹
3 Plaintiff also reported that she was not sleeping and was having trouble lifting her
4 parents in and out of bed and had sold her house in Las Vegas.¹⁴⁰ On March 17,
5 2017, Plaintiff reported that her feet and back were sore from helping her parents
6 by herself and she reported no headaches at that visit or on March 26, 2017 and
7 April 6, 2017.¹⁴¹ Plaintiff did report on April 12, 2017, that she had a migraine
8 after eating Philippino food.¹⁴²

9 On May 11, 19, and 26 of 2017, Plaintiff reported that she was shopping,
10 cooking, and chauffeuring and lifting her mother by herself.¹⁴³ On June 1, 2017,
11 Plaintiff reported that her brother was back in town but she had no migraines.¹⁴⁴
12 At appointments on June 8, 2017 and June 16, 2017, Plaintiff reported wedding
13 and graduation invitations and events and said she was doing a lot of work caring
14 for her mother but reported no headaches or migraines.¹⁴⁵ On June 26, 2017,

15
16 ¹³⁹ *Id.*

17 ¹⁴⁰ *Id.*

18 ¹⁴¹ *Id.*

19 ¹⁴² *Id.*

20 ¹⁴³ AR 521.

21 ¹⁴⁴ *Id.*

22 ¹⁴⁵ *Id.*

1 Plaintiff reported fatigue, and on July 6, 2017, she reported pain in her shoulder
2 and back from lifting her mother daily.¹⁴⁶

3 On July 12, 2017, Plaintiff reported that her neighbor was now an
4 intermittent home helper but she reported no headache or migraine.¹⁴⁷ On July 16,
5 2017, Plaintiff did not report any headaches but reported a headache at her July
6 26, 2017 appointment.¹⁴⁸ On August 2, 2017, Plaintiff reported a migraine that was
7 light sensitive and was triggered by smoke and heat and on August 9, 2017
8 reported a mild headache most likely from air quality.¹⁴⁹ On August 15, 2017 and
9 August 25, 2017, Plaintiff reported no headaches but did report that she would be
10 leaving for one month to travel to Arizona in a motorhome.¹⁵⁰ On her return from
11 her travel to Arizona on September 26, 2017, Plaintiff reported mild back pain but
12 no headaches and at her next appointment on October 4, 2017, she reported having
13 a headache for 2 days and stiffness since vacation.¹⁵¹

14
15
16
17 ¹⁴⁶ *Id.*

18 ¹⁴⁷ AR 522.

19 ¹⁴⁸ *Id.*

20 ¹⁴⁹ *Id.*

21 ¹⁵⁰ *Id.*

22 ¹⁵¹ *Id.*

1 At follow up appointments on October 11, 2017, October 17, 2017, and
2 October 27, 2017, Plaintiff did not report back pain or headaches.¹⁵² On November
3 1, 2017, Plaintiff complained of back pain from lifting her mother at home daily,
4 and on November 7, 2017, Plaintiff reported that she was doing more lifting
5 because her brother was working more.¹⁵³ On November 14, 2017, Plaintiff
6 reported a headache after she had eaten soy at a restaurant, and on November 22,
7 2017, she reported mild shoulder pain after lifting a 24 pound turkey.¹⁵⁴ On
8 November 28, 2017, Plaintiff reported that her brother was working and that
9 handling her mother was affecting her back and on December 6, 2017, she reported
10 that she had home help 2 days a week and was going to get home help 2 nights a
11 week.¹⁵⁵ On December 14, 2017, Plaintiff reported a mild headache due to irregular
12 sleep schedules from helping her mother at night and at a follow-up on December
13 20, 2017, Plaintiff reported just mild neck pain and a headache.¹⁵⁶

14 On December 22, 2017, Plaintiff reported that she had “tweaked” her back
15 when lifting her mother and had a migraine and mild low back pain.¹⁵⁷ On January
16

17 ¹⁵² AR 522-523.

18 ¹⁵³ AR 523.

19 ¹⁵⁴ *Id.*

20 ¹⁵⁵ *Id.*

21 ¹⁵⁶ AR 523-524.

22 ¹⁵⁷ AR 524.

1 3, 2018, she reported mild neck and back pain due to irregular sleep; on January
2 11, 2018, she reported low back pain from lifting her mother; and on January 18,
3 2018, she reported a gradual onset of mild to moderate back pain due to lifting her
4 mother.¹⁵⁸ On February 7, 2018, Plaintiff reported a headache and neck pain due to
5 the physical and emotional stress of caring for her mother.¹⁵⁹

6 On March 20, 2018, Plaintiff reported that she strained her back when she
7 rotated to the right while unloading a laundry basket.¹⁶⁰ On May 17, 2018, Plaintiff
8 reported left lower back pain after tripping, but on May 25, 2018, she reported that
9 she had loaded a heavy ham and cases of water into her car when shopping.¹⁶¹ On
10 June 22, 2018 and June 29, 2018, Plaintiff reported left lower back pain and
11 sciatica after a lifting injury at home.¹⁶² At none of the eight appointments Plaintiff
12 attended between March 20, 2018, and July 27, 2018, did she complain of
13 migraines or headaches.¹⁶³ On August 14, 2018, Dr. Patton ordered an MRI of the
14 lumbar spine.¹⁶⁴

15
16 ¹⁵⁸ *Id.*

17 ¹⁵⁹ *Id.*

18 ¹⁶⁰ AR 525.

19 ¹⁶¹ *Id.*

20 ¹⁶² *Id.*

21 ¹⁶³ *Id.*

22 ¹⁶⁴ AR 526.

1 4. The ALJ's Findings

2 The ALJ found Plaintiff's statements concerning the intensity, persistence,
3 and limiting effects of the symptoms of her medically determinable impairments
4 not entirely consistent with the medical evidence and other evidence in the
5 record.¹⁶⁵

6 With regard to Plaintiff's issues with her tension headaches and migraine
7 headaches, the ALJ articulated her reasoning in a lengthy paragraph which began
8 as follows:

9 While the claimant had problems with migraine headaches prior to the
10 date last insured, the record indicates that they were not as chronic or
11 as severe as she has described. For instance, although medical records
12 from Dr. Hyson from November 2013 through September 2016, indicate
13 that the claimant was experiencing migraine headaches, with variable
relief from her medications (1F), she regularly rated her migraines at
only 2 out of 10 in severity during her appointments at the Joint
Chiropractic in 2014 and 2015 (See e.g., 3F7-12, 14-15, 23, 25-42, 48-
52). . .¹⁶⁶

14 The ALJ went on to cite to the medical records of Chiropractic Health Center
15 recited above, noting further that in the time period immediately prior to and
16 during the relevant period between December 1, 2017, and December 31, 2017, the
17 records indicated as follows:

18 While she complained of a headache that lasted two days on October
19 4, 2017 (9F13) and she reported having a headache when she was sick
20 on November 14, 2017, treatment notes on October 11, 2017, October
17, 2017, October 27, 2017, November 11, 2017, November 7, 2017,

21 ¹⁶⁵ AR 25.

22 ¹⁶⁶ AR 802.

1 November 22, 2017, November 28, 2017, and December 6, 2017
2 document no significant headache complaints (9F14). On December
3 14, 2017, she complained of a mild headache because of her irregular
4 sleeping schedule, which was due to her mom's wake ups at night
5 (9F14). On December 20, 2017 and December 22, 2017, she described
6 having just mild headaches (9F15). Although the claimant continued
7 to have headaches prior to the date last insured that were usually
8 triggered by poor food choices, environmental factors, and stress over
9 her parents' health, the above evidence indicates that her headaches
10 occurred only intermittently and were often only mild or 2/10 in
11 severity.¹⁶⁷

12 The ALJ went on to reason that Dr. Lee's medical records did not document
13 any contemporaneous report of a migraine or tension headache during her
14 examinations, nor did she ever need to seek urgent care from Dr. Lee or any
15 emergency room for any headache despite claims that her headaches were
16 debilitating.¹⁶⁸

17 With regard to the issue of Plaintiff's back impairment, the ALJ articulated
18 the following reasoning:

19 In terms of the claimant's spinal disorder, imaging studies in October
20 2017 showed mild osteoarthritis at C5-6 (9F19) and moderate
21 degenerative changes at L3-4 (9F21). The claimant's spinal
22 complaints, though, are not fully consistent with the conservative
23 nature of her treatment, which consisted of only chiropractic care
prior to the date last insured (3F' 0F). Her spinal complaints are also
not fully consistent with her benign examinations during the period at
issue. For example, when seen on April 1, 2017, she had a normal
inspection of the back, including normal range of motion and no
costovertebral angle tenderness. She also showed normal range of
motion of the lower extremities (14F43). When seen on March 9, 2017
and June 9, 2017, she had no evidence of musculoskeletal

21 ¹⁶⁷ AR 803.

22 ¹⁶⁸ AR 804.

1 misalignment, asymmetry, crepitation, defects, tenderness, masses,
2 effusions, decreased range of motion, instability, atrophy, or abnormal
3 strength or tone in the neck, spine, ribs, or pelvis. She also had an
appropriate gait, stance, tiptoes, heel, heel to toe, and swing phase
(5F4-5, 8-9).¹⁶⁹

4 Additionally, the ALJ noted that Plaintiff's allegations were not consistent
5 with the wide range of activities that Plaintiff engaged in which included taking
6 care of her parents; lifting 40-pound water packs; driving long distances; engaging
7 in household chores such as cooking, cleaning and shopping; traveling between Las
8 Vegas and Washington; attending a number of weddings and graduations; and
9 taking a monthlong motorhome trip to Arizona.¹⁷⁰

10 4. Analysis

11 The ALJ's reasoning describes three instances in which she found Plaintiff's
12 subjective allegations to be at odds with the record: that Plaintiff was able to
13 engage in activities of daily living and work in stressful and demanding jobs during
14 the relevant time period, that Plaintiff's medical record indicates that she had
15 predominantly benign findings on examination in the relevant time period, and
16 that the medical record indicates that even Plaintiff's moderate symptoms appear
17 to have been successfully treated with medication during the latter part of the
18 relevant period. Throughout her brief, Plaintiff argues that the ALJ's reasoning
19 fails to consider that Plaintiff suffered from anxiety when she left home.

21 ¹⁶⁹ AR 804-805.

22 ¹⁷⁰ AR 805.

1 a. Plaintiff's activities

2 The ALJ considered that Plaintiff's activities and abilities were inconsistent
3 with her symptom reports.¹⁷¹ If a claimant can spend a substantial part of the day
4 engaged in pursuits involving the performance of work-related functions, the ALJ
5 may find these activities inconsistent with the reported disabling symptoms.¹⁷²
6 Here, the ALJ highlighted that Plaintiff's activities were quite numerous and in
7 large part inconsistent with her claims of disabling limitations.¹⁷³

8 Plaintiff's activities can be grouped into two separate categories: those
9 which were performed in caring for her parents and those that she performed for
10 her own interests and leisure. It is noted that Plaintiff took a month-long vacation
11 in which she traveled more than 1300 miles by motorhome to Arizona.¹⁷⁴ The
12 record reflects that Plaintiff did in fact take that vacation and that when she
13 returned from that travel, she reported only mild back pain and no headaches.¹⁷⁵
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17 ¹⁷¹ AR 26-27.

18 ¹⁷² *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (superseded in part on
19 other grounds by statute).

20 ¹⁷³ SAR 805-806.

21 ¹⁷⁴ AR 804.

22 ¹⁷⁵ AR 522-523.

1 The ALJ also noted that Plaintiff took 220-mile trips from Puyallup to Tillamook
2 and attended a number of weddings and graduations.¹⁷⁶

3 The ALJ reasonably found that Plaintiff's activities in caring for her parents
4 is equally, if not more, inconsistent with her allegations. The record contains
5 numerous indications that Plaintiff cared for her parents. The ALJ cited to
6 medical records in which Plaintiff reported consistently that she cooked, shopped,
7 cleaned, and even lifted her parents.¹⁷⁷ The medical records indicate that Plaintiff
8 reported engaging in heavy exertion both immediately prior to and immediately
9 after the relevant period.

10 While Plaintiff has claimed that she did not care for her parents or had
11 others helping her, the records belie that fact. On November 1, 2017, Plaintiff
12 complained of back pain from lifting her mother at home daily and on November 7,
13 2017, Plaintiff reported that she was doing more lifting because her brother was
14 working more.¹⁷⁸ On November 22, 2017, she reported mild shoulder pain after
15 lifting a 24 pound turkey.¹⁷⁹ On November 28, 2017, Plaintiff reported that her
16 brother was working and that handling her mother was affecting her back, and on
17 December 6, 2017, she reported that she had home help 2 days a week and was

18
19 ¹⁷⁶ AR 804.

20 ¹⁷⁷ AR 805.

21 ¹⁷⁸ AR 523.

22 ¹⁷⁹ *Id.*

1 going to get home help 2 nights a week.¹⁸⁰ On December 14, 2017, Plaintiff
2 reported a mild headache due to irregular sleep schedules from helping her mother
3 at night.¹⁸¹ On December 22, 2017, Plaintiff reported that she had “tweaked” her
4 back when lifting her mother and had a migraine and mild low back pain.¹⁸² But on
5 January 18, 2018, she reported she was still lifting her mother.¹⁸³ On March 20,
6 2018, Plaintiff reported that she strained her back when she rotated to the right
7 while unloading a laundry basket, and on May 25, 2018, she reported that she had
8 loaded a heavy ham and cases of water into her car when shopping.¹⁸⁴

9 While Plaintiff argues that she was not the person who was caring for her
10 mother or that she had in-home assistance, the record does not support that
11 Plaintiff was not caring for her mother. The Court finds no error in the ALJ’s
12 reasoning regarding Plaintiff’s ability to engage in a wide range of exertional
13 activities during the relevant period.

14 *b. Severity and Frequency of Migraine and Tension Headaches*

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18 ¹⁸⁰ *Id.*

19 ¹⁸¹ AR 523-524.

20 ¹⁸² AR 524.

21 ¹⁸³ *Id.*

22 ¹⁸⁴ AR 525.

23

1 The ALJ found that the objective findings in the record are also not
2 consistent with chronic debilitating symptoms.¹⁸⁵ Objective medical evidence—
3 signs, laboratory findings, or both—is a relevant factor for the ALJ to consider
4 when assessing a claimant’s symptoms.¹⁸⁶ Here, the medical record also supports
5 the ALJ’s reasoning. While Plaintiff correctly points out that there is no objective
6 test by which a plaintiff can prove a migraine, it is uncommon that an individual
7 who suffers from migraines of the severity and frequency alleged by Plaintiff has
8 not sought emergency room treatment or urgent care from their treating source on
9 at least one occasion. The record is devoid of any such emergent treatment.

10 Additionally, while Plaintiff’s reports that her migraine and headaches were
11 a 2/10 in severity was prior to the relevant period, her reports of tension headaches
12 during the relevant period is inconsistent with the severity she alleges, as she did
13 describe them as “mild” on several occasions.¹⁸⁷ Her reports of migraines are not
14 necessarily inconsistent with the severity alleged but are not consistent with the
15 frequency alleged, as she only reported five migraines from January 1, 2017, to
16 December 31, 2017, and at least one of those migraines was caused by eating soy,

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19 ¹⁸⁵ AR 25.

20 ¹⁸⁶ 20 C.F.R. § 416.902(k); 3 Soc. Sec. Law & Prac. § 36:26, Consideration of
21 objective medical evidence (2019).

22 ¹⁸⁷ AR 515-526.
23

1 which she knew she should not eat.¹⁸⁸ Plaintiff argues that she had migraines more
2 frequently but that argument is incorrect because she both inflates the number and
3 she seeks to treat tension headaches in the same manner as migraine headaches.
4 Migraine headaches are distinctly different than tension headaches, as they are
5 accompanied by aura and sensitivity to light, sound, and smell.¹⁸⁹ Tension
6 headaches are the most common type of headaches and are characterized as
7 occurring more frequently while migraine headaches are less common and less
8 frequent and are recognized to be more severe and debilitating than tension
9 headaches.¹⁹⁰

10 Moreover, Plaintiff's treating source, Dr. Lee, opined that Plaintiff's
11 medications were stable and continued her medication regimen and Dr. Hyson
12 thought that Plaintiff's condition was stable once she reported that she was "doing
13 better" after adding Depakote to her medications.¹⁹¹

14 *c. Plaintiff's Complaints of Disabling Back Pain*

15
16 ¹⁸⁸ AR 520-524.

17 ¹⁸⁹ Mayo Clinic, Migraine with aura - Symptoms & causes - Mayo Clinic,
18 www.mayoclinic.org/diseases-conditions/migraine-with-aura (last viewed October
19 15, 2024.)

20 ¹⁹⁰ Medical News Today, How to tell the difference between migraine and headaches,
21 www.medicalnewstoday.com/articles/324890. (Last viewed October 15, 2024.)

22 ¹⁹¹ AR 328.

1 Plaintiff argues that the ALJ erred in her reasoning that Plaintiff's claims of
2 debilitating back pain were inconsistent with the record. The Court disagrees. As
3 the Court noted above when addressing Plaintiff's activities of daily living, Plaintiff
4 engaged in activities which were far in excess of those one would expect from a
5 person limited to the sedentary level, as Plaintiff alleges to be. In particular,
6 Plaintiff was reporting that she was lifting her mother up to and even past her
7 date last insured. She also reported that she was lifting and carrying 40 pounds
8 and driving a distance in excess of 200 miles on at least two occasions in addition to
9 driving 1300 in a motor home both to and from Arizona.

10 While Plaintiff is correct that she was prescribed narcotic medication and
11 that this is not strictly to be construed as "conservative care" that fact should be
12 taken in context that even during the time that she was taking that medication she
13 was reporting to her doctors that she was lifting her mother on a daily basis and
14 that her heavy lifting was causing her pain.¹⁹² The ALJ acknowledged that
15 Plaintiff had been prescribed narcotic medication but also noted that Plaintiff was
16 not receiving injections or receiving any other type of invasive treatment. In light
17 of the totality of evidence, the Court finds that substantial evidence in the record
18 supports the ALJ's findings.

19 While the medical record might be interpreted in a different manner, it is
20 not the duty of the Court to reweigh the evidence, but instead to determine

21
22 ¹⁹² AR 523-524.

whether substantial evidence supports the ALJ's decision. The Court concludes that the ALJ has adequately explained her reasoning. The Court declines to remand as to this issue.

B. Third-party witness statements: Plaintiff fails to establish consequential error.

Plaintiff argues that the ALJ violated the law of the case because she did not properly consider the witness testimony, as directed by the Court in its prior Order. The Court disagrees.

a. The Court's prior order

When considering Plaintiff's prior appeal, the Court found that ALJ Moldafsky erred in failing to articulate his consideration of the witness statements that were then in the record.¹⁹³ The Court stated:

[A]n ALJ is "not required to articulate how [he] considered evidence from nonmedical sources using the [medical-opinion] requirements" ¹⁹⁴ But while the ALJ need not utilize the medical-opinion articulation requirements when considering evidence from nonmedical sources, the regulations do not state that the ALJ is not required to consider lay statements. Instead, the regulations specify that—except for some specifically excluded items not encompassing lay statements about the nature, frequency, or intensity of a claimant's symptoms—

¹⁹³ The record presently before the Court includes additional witness statements that were not present in the prior record.

¹⁹⁴ 20 C.F.R. § 404.1520c(b)(2) ("[W]e will explain how we considered the supportability and consistency factors for a medical source's medical opinions or prior administrative medical findings in your determination or decision.").

1 the ALJ “will consider all evidence in [the] case record when [making]
2 a determination or decision” as to disability.^{195 196}

3 The Court noted that although the ALJ’s findings regarding the witness
4 statements need not be detailed the ALJ “must give reasons that are germane to
5 each witness” and supported by substantial evidence with reasoning clear enough
6 to permit meaningful review.¹⁹⁷ The Court held that ALJ Moldafsky’s error was
7 consequential on the record in this case because the witness statements largely
8 corroborated Plaintiff’s allegations of disabling back pain and migraine headaches
9 prior to the date last insured.¹⁹⁸

10 *b. The ALJ’s findings*

11 The ALJ cited to each of the witness statements specifically and noted the
12 dates they were written and signed and then went on to articulate her
13 consideration of the statements as follows:

14 While the undersigned is not required to articulate the persuasiveness
15 of these statements (See 20 CFR 404.1520c and 416.920c), the
16 undersigned notes that these statements were all issued years after
17 the date last insured of December 31, 2017. These statements are also
18 not fully consistent with the medical records during the period at
19 issue, which indicate that her headaches were typically occurring only
20 intermittently and were often mild or 2/10 in severity prior to the date
21 last insured. As documented above on examinations in 2017, the
22 claimant appeared pleasant, cooperative, and in no acute distress, she
23

19 ¹⁹⁵ 20 C.F.R. § 404.1520(a)(3). See also 20 C.F.R. §§ 404.1520b(c), 404.1513(a)(4).

20 ¹⁹⁶ AR 877-878.

21 ¹⁹⁷ AR 878-879.

22 ¹⁹⁸ AR 879-880.

1 had painless full range of motion in her head and neck, she had
2 normal mental status, characterized by including full orientation,
3 intact recent and remote memory, appropriate attention span,
4 concentration, fund of knowledge, and speech, and she retained
5 grossly normal neurologic function, including 5/5 motor strength,
6 normal gait, normal heel walk, normal toe walk, negative Romberg's
7 signs, and intact cranial nerves (5F4-5, 8-9). She also had no evidence
8 of musculoskeletal misalignment, asymmetry, crepitation, defects,
9 tenderness, masses, effusions, decreased range of motion, instability,
10 atrophy, or abnormal strength or tone in the neck, spine, ribs, or
11 pelvis (5F4-5, 8-9). These unremarkable examinations findings do not
12 corroborate the disabling symptoms/limitations described by the
13 claimant's various lay witnesses. The undersigned is persuaded more
14 by the contemporaneous evidence during the period at issue than the
15 recall of the claimant's family and friends years after the fact.

9 The lay witness statements are likewise not fully consistent with the
10 claimant's activities during the period at issue. As documented above,
11 the claimant's activities included performing lifting, shopping,
12 cooking, and driving for her ill father and mother, flying back and
13 forth between Washington state and Las Vegas, attending weddings,
14 graduations, and an outdoor airshow, and going on a monthlong
15 motorhome trip. It seems somewhat inconceivable that, given the
16 disabling limitations described by the claimant's various lay
17 witnesses, the claimant could engage in any such activities.¹⁹⁹

14 *c. Relevant Witness Statements*

15 In its prior finding, the Court cited the relevant witness statements. Those
16 statements are incorporated herein, by reference.

17 *d. Analysis*

18 Plaintiff argues that the ALJ violated the Court's remand because the Court
19 articulated in its prior order that the statements largely corroborated Plaintiff's
20 complaints of migraine headaches and back pain. While Plaintiff is correct that the
21

22 ¹⁹⁹ AR 807-808.

1 Court found the witness statements supportive of Plaintiff's complaints, the ALJ
2 did not discount the witness statements for inconsistency. Rather, the ALJ
3 reasoned that the witness statements were written years after the fact and were
4 inconsistent with the medical records that were written contemporaneously.

5 The Ninth Circuit has ruled that an ALJ's reasoning that a medical source's
6 opinions were inconsistent with the contemporaneous medical records was a
7 legitimate reason to assign limited weight to the opinions.²⁰⁰ Similarly, the Court
8 concludes that the reason articulated by the ALJ – that the third-party witness
9 statements were made years later and inconsistent with the contemporaneous
10 medical evidence is a legitimate reason to have discounted the statements.

11 Additionally, although the ALJ did not include the inconsistency of the
12 newer third-party statements as part of her reasoning, the Court notes that the
13 statements contain conflicting testimony. In particular, the recent statement
14 submitted by Plaintiff's sister states that during the relevant time period she and
15 Plaintiff's brother were working, and their mother's home care fell on Plaintiff.²⁰¹
16 She also stated that their neighbors' children did not begin to come over to take
17 care of their mother until 2020.²⁰²

18
19 ²⁰⁰ *Eichenberger v. Kijakazi*, No. 22-35937, 2023 WL 5928483 (9th Cir. Sept. 12,
20 2023).

21 ²⁰¹ AR 1118.

22 ²⁰² *Id.*
23

1 Given the record now before the Court, including the ALJ's articulated
2 reasoning for given limited weight to the third-party opinions, the Court concludes
3 that Plaintiff has not met her burden to show consequential error. Because the
4 Court finds that substantial evidence supports the ALJ's reasoning, the Court
5 declines to remand as to this issue.

6 **C. Medical Opinions: Plaintiff fails to establish consequential error.**

7 Plaintiff argues the ALJ erred by finding that the opinion of the treating
8 neurologist, Dr. Lee, was not persuasive because it was not supported by his own
9 exams before or after the DLI.²⁰³ Plaintiff argues that the ALJ erred in reasoning
10 that the "normal" findings during examinations were not relevant to the issue of
11 migraine headaches.²⁰⁴ She also argues that the Court in its prior order found that
12 Dr. Lee had reviewed the 2018 MRI films and they were consistent with the 2017
13 x-rays.²⁰⁵ She argued that the ALJ erred in finding Dr. Lee's opinions inconsistent
14 with the record and with Plaintiff's daily activities.²⁰⁶ The Commissioner responds
15 that the ALJ articulated examination findings that were inconsistent with Dr.
16 Lee's opinions.²⁰⁷

18 ²⁰³ ECF No. 6.

19 ²⁰⁴ *Id.*

20 ²⁰⁵ *Id.*

21 ²⁰⁶ *Id.*

22 ²⁰⁷ ECF No. 8.

1 The Court addresses each of these arguments. As is explained below, the
2 ALJ reasonably found that Dr. Lee's opinions were not sufficiently explained or
3 supported by the record.

4 1. Standard

5 An ALJ must consider and articulate how persuasive she found each medical
6 opinion, including whether the medical opinion was consistent with and supported
7 by the record.²⁰⁸ The factors for evaluating the persuasiveness of medical opinions
8 include, but are not limited to, supportability, consistency, relationship with the
9 claimant, and specialization.²⁰⁹ Supportability and consistency are the most
10 important factors.²¹⁰ When considering the ALJ's findings, the Court is constrained
11 to the reasons and supporting explanation offered by the ALJ.²¹¹

12 2. Dr. Lee's opinion

13 On October 12, 2020, Dr. Lee completed a medical source statement.²¹² He
14 stated that he first examined Plaintiff on March 9, 2017, and last examined her on
15 October 8, 2020.²¹³ Dr. Lee said that Plaintiff had the following diagnoses: lumbar
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17 ²⁰⁸ 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

18 ²⁰⁹ 20 C.F.R. § 416.920c(c)(1)–(5).

19 ²¹⁰ *Id.* § 416.920c(b)(2).

20 ²¹¹ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

21 ²¹² AR 571-573.

22 ²¹³ AR 571.

1 spondylolisthesis, degenerative disc disease of the lumbar spine, migraines, and
2 tension headaches.²¹⁴ He said that her symptoms were back pain and migraines;
3 that her relevant test result was a 2018 MRI of the lumbar spine; that she would
4 need to lie down in the afternoon for a couple hours; that her medications did not
5 have side-effects; that she had no condition that would cause her pain; and that she
6 took the following medications: Emgality, Depakote, Topamax, Fioricet, and
7 Tramadol.²¹⁵ Dr. Lee opined that working as a registered nurse would cause her
8 condition to deteriorate due to her difficulty in moving patients.²¹⁶ He indicated
9 that if she tried to work she would be absent for 4 days a month due to back pain
10 and headaches, and that she was capable of performing work that was either light
11 or sedentary in nature.²¹⁷ Dr. Lee stated that Plaintiff was capable of traveling by
12 bus or subway and that his opined limitations had lasted since at least December
13 1, 2017.²¹⁸

18 ²¹⁴ *Id.*

19 ²¹⁵ *Id.*

20 ²¹⁶ AR 572.

21 ²¹⁷ *Id.*

22 ²¹⁸ AR 572-573.

1 3. The ALJ's findings

2 When evaluating Dr. Lee's opinion, the ALJ gave several reasons for
3 concluding that it was not persuasive.²¹⁹ First, the ALJ found that Dr. Lee's
4 opinion was inconsistent with his own examination findings.²²⁰ The ALJ stated:

5 Dr. Lee's opinion is not persuasive. First, Dr. Lee's opinion is not
6 supported by his own examination findings prior to the date last
7 insured. For example, Dr. Lee's assessment of disabling headaches is
8 not corroborated by his examinations of the claimant on March 9,
9 2017 and June 9, 2017, during which she was pleasant, cooperative,
10 and in no acute distress, she had painless full range of motion in her
11 head and neck, she had normal mental status, characterized by
12 including full orientation, intact recent and remote memory,
13 appropriate attention span, concentration, fund of knowledge, and
14 speech, and she retained grossly normal neurologic function, including
15 5/5 motor strength, normal gait, normal heel walk, normal toe walk,
16 negative Romberg's signs, and intact cranial nerves (5F4-5, 8-9).

17 Dr. Lee's assessment of disabling back pain is also not substantiated
18 by his examination findings in March 2017 and June 2017 showing an
19 appropriate gait, stance, tiptoes, heel, heel to toe, and swing phase
20 and no evidence of musculoskeletal misalignment, asymmetry,
21 crepitation, defects, tenderness, masses, effusions, decreased range of
22 motion, instability, atrophy, or abnormal strength or tone in the neck,
23 spine, ribs, or pelvis (5F4-5, 8-9). These unremarkable examinations
findings do not support Dr. Lee's conclusion that the claimant is
disabled due to her back and headache conditions.²²¹

16 The ALJ continued on to reason that Dr. Lee's examination findings after
17 the date last insured were also not consistent with his opinion.²²² She then

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19 ²¹⁹ AR 806-807.

20 ²²⁰ AR 806.

21 ²²¹ AR 806.

22 ²²² *Id.*

1 articulated that Dr. Lee's opinion was inconsistent with the other treatment
2 records that indicated that Plaintiff suffered headaches that were intermittent and
3 mild, with a severity of 2/10.²²³ Additionally, the ALJ reasoned that Dr. Lee's
4 opinions were not consistent with Plaintiff's activities and articulated:

5 Dr. Lee's opinion is not fully consistent with the claimant's active
6 lifestyle prior to the date last insured, which included performing
7 lifting, shopping, cooking, and driving for her ill father and mother,
8 flying back and forth between Washington state and Las Vegas,
9 attending weddings, graduations, and an outdoor airshow, and going
10 on a monthlong motorhome trip. It seems somewhat inconceivable
11 that someone with the limitations Dr. Lee assessed would have the
12 ability to engage in such activities.

13 Based on her ability to lift 40-pound water packs at Costco (9F9), a 24-
14 pound turkey (9F14), and her mom (9F12, 15), as well as examination
15 findings in 2017 demonstrating 5/5 motor strength, normal gait, and
16 normal musculoskeletal range of motion (5F4-5, 8-9), the undersigned
17 finds that the claimant retained the physical functional capacity to
18 perform light exertional work, with some postural limitations, prior to
19 the date last insured.²²⁴

20 Lastly, the ALJ reasoned that Plaintiff's allegations of light sensitivity are
21 not supported by her normal cranial nerve examinations because part of a cranial
22 nerve examination involves shining a penlight in the patient's eyes.²²⁵
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20 ²²³ AR 806-807.

21 ²²⁴ AR 807.

22 ²²⁵ *Id.*

1 4. Relevant medical records

2 In its prior finding, the Court cited the medical records of sources who
3 treated Plaintiff during the relevant period. Those records are incorporated herein,
4 by reference.

5 5. Analysis

6 The Court notes that Dr. Lee's opinion does not state that working would
7 cause Plaintiff's condition to deteriorate but that working specifically as a
8 registered nurse would cause Plaintiff's condition to deteriorate because of the
9 lifting involved.²²⁶ Dr. Lee opined that Plaintiff was capable of performing a range
10 of sedentary or light work.²²⁷ For those reasons, the only opinion rendered by
11 Dr. Lee that is at odds with the ALJ's formulated RFC is the opinion that Plaintiff
12 would miss four or more days of work per month due to back pain and headaches.

13 The Court will address the reasons given by the ALJ to discount Dr. Lee's
14 opinions, although out of order. The Court first notes that the ALJ's reasoning
15 that Plaintiff's normal cranial nerve examinations are inconsistent with migraine
16 headaches is flawed. While the ALJ is correct that during a cranial nerve
17 examination a penlight is often used during an examination of the 3rd, 4th, and 6th
18 cranial nerves, it is used to have the patient track a moving target and at times
19 used for pupillary light response, she fails to recognize that Dr. Lee is a board-

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21 ²²⁶ AR 572.

22 ²²⁷ *Id.*
23

1 certified neurologist who is trained to perform a cranial nerve examination in a
2 manner that would not trigger a migraine.²²⁸

3 As noted, the period at issue is the period on or before Plaintiff's date last
4 insured of December 31, 2017. The ALJ was therefore correct to review Dr. Lee's
5 treatment notes for the two examinations he performed on Plaintiff in 2017. The
6 ALJ noted that Dr. Lee's examination findings were not supportive of the Dr. Lee's
7 assessment of disabling head pain and disabling back pain.²²⁹ Because the Court
8 in its prior order found that Dr. Lee's treatment of Plaintiff after the date last
9 insured, such as the 2018 MRI findings and the 2017 x-ray findings, might have
10 given insight to Dr. Lee.²³⁰ Here the ALJ did so, and considered that after the date
11 last insured, despite MRI and x-ray findings Plaintiff had full range of motion, no
12 musculoskeletal tenderness, and normal gait and stance.²³¹

13 The Court then looks to the consistency of Dr. Lee's opinion and concludes
14 that Dr. Lee's opinion that Plaintiff would be absent for four days a month is
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16

17 ²²⁸ Merck Manual, *How to Assess the Cranial Nerves - Neurologic Disorders* - Merck
18 Manual Professional Edition, 2023. (merckmanuals.com – last viewed October 16,
19 2024.)

20 ²²⁹ AR 806.

21 ²³⁰ AR 883-884.

22 ²³¹ AR 806.

1 inconsistent with the record as a whole.²³² In her analysis of the consistency of
2 Dr. Lee's opinions with the medical record, the ALJ considered that the
3 contemporaneous medical records reflected that Plaintiff's headaches were usually
4 triggered by poor choices, stress, and environmental factors and that they were
5 intermittent and mild in severity.²³³ The Court agrees with Plaintiff that the ALJ's
6 reasoning that stress and environmental factors caused her headaches was not a
7 good reason because those were not factors that were entirely within her control.
8 Plaintiff also argues that the ALJ misconstrued the record by citing to her reports
9 of mild headaches in 2013 and 2014, long before the relevant period.²³⁴ Looking at
10 the medical record, however, the ALJ is correct that in March 2017, Plaintiff had
11 no migraines or headaches; in April 2017, Plaintiff had a headache after eating
12 Philippino food; in May 2017 Plaintiff reported no headaches; in June 2017,
13 Plaintiff reported no headaches; in July 2017, Plaintiff reported no headaches; in
14 August 2017, Plaintiff reported one headache that was light sensitive and one
15 headache that was mild; in September 2017, Plaintiff reported no headaches; in
16 October 2017, Plaintiff reported one headache that lasted for 2 days; in November
17 2017, Plaintiff reported one headache after eating soy at a restaurant; and in

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19 ²³² 20 C.F.R. § 404.1520c(c)(1) (comparing the medical opinion in question to
20 "*evidence* from other medical sources and nonmedical sources).

21 ²³³ *Id.*

22 ²³⁴ ECF No. 6.
23

1 December 2017, Plaintiff reported one mild headache due to irregular sleep, a
2 tension headache, and one migraine.²³⁵

3 The Court has set forth its findings above as to the inconsistency of
4 Plaintiff's activities and her allegations of disabling back pain during the relevant
5 period. Here, the ALJ similarly found that Dr. Lee's opinions are inconsistent with
6 the fact that during the relevant period Plaintiff was regularly lifting her mother,
7 lifting heavy objects, traveling long distances, and participating in social events.²³⁶
8 While the Court notes that the record does not support Dr. Lee's opinion that
9 Plaintiff would be absent for four days per month, it does support his opinion that
10 Plaintiff would be limited to a range of light or sedentary work.

11 Had Dr. Lee limited Plaintiff to less than light work, the Court would find
12 concern that the record was lacking a medical opinion. But the formulated RFC
13 limiting Plaintiff to a range of light work with additional limitations is not
14 inconsistent with Dr. Lee's opinion that Plaintiff could perform work at the light or
15 sedentary exertional level, other than the limitation as to absences, which the ALJ
16 adequately explained her reasoning to find unpersuasive.

21 ²³⁵ AR 522-524.

22 ²³⁶ AR 807.

6. Summary

It is the ALJ's responsibility to review and evaluate the conflicting evidence and medical opinions.²³⁷ The ALJ meaningfully explained why she evaluated Dr. Lee's medical opinions as she did, and these reasons are supported by substantial evidence.

IV. Conclusion

Accordingly, **IT IS HEREBY ORDERED:**

1. The ALJ's nondisability decision is **AFFIRMED**.
2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 6 and 8**, enter **JUDGMENT** in favor of the **Commissioner**, and **CLOSE** the case.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

DATED this 28th day of October, 2024.



EDWARD F. SHEA
Senior United States District Judge

²³⁷ *Tackett v. Apfel*, 180 F.3d 1094, 1102 (9th Cir. 1999).